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July 2, 2019

Sent via electronic mail

Stephanie Kercheval
Regional Freedom of Information Officer
U.S. EPA, Region 10
Office of Ecosystems, Tribal and Public Affairs
1200 6th Avenue ETPA-124
Seattle, WA 98101

Re: Freedom of Information Act (FOIA) Request for Records Regarding Unpermitted Sewage Discharges, Fecal Coliform Data, and Sanitary Sewer System at Naval Base Kitsap and Puget Sound Naval Shipyard

Dear Ms. Kercheval:

This request is made pursuant to the Freedom of Information Act, 5 U.S.C. § 552 on behalf of the Suquamish Tribe. Please send copies of the following information:

- All records,¹ including but not limited to notices, inspection reports, illicit discharge reports, noncompliance reports, citizen complaints, documents in compliance files, written communications (e.g., emails, texts, letters, memoranda) between the U.S. Environmental Protection Agency (EPA) and the Navy, Washington State Department of Ecology, or Kitsap Public Health District, internal EPA communications (e.g., emails, texts, letters, memoranda), photographs, maps, diagrams, and notes, created or received from June 10, 2014, to present relating in whole or in part to discharges, leaks, flows, or any other additions of untreated sewage to Puget Sound or waters that enter Puget Sound from the following U.S. Navy installations:
 - Naval Base Kitsap-Keyport
 - Naval Base Kitsap-Jackson Park Naval Housing
 - Naval Base Kitsap-Bremerton / Puget Sound Naval Shipyard and Intermediate Maintenance Facility (PSNS&IMF)

¹ "Records" means any and all (whether in draft or final form) data, reports, analyses, studies, spreadsheets, correspondence, electronic mail, hard mail, memoranda, notes, meeting notes, telephone logs, photographs, videos, maps, diagrams, database entries, and other documentation.

Discharges for which we seek records include but are not limited to the following specific discharges on or around the following dates at the following installations:

- Naval Base Kitsap-Keyport:
 - December 18, 2017 through April 13, 2018 (sanitary sewer leak to stormwater system)
 - November 14, 2018 (cracked sewer line from ATF barge at pier to force main)
- Naval Base Kitsap-Jackson Park Naval Housing:
 - November 22, 2016 (sewer line clog, back up, and flow out of a manhole)
- Naval Base Kitsap-Bremerton / Puget Sound Naval Shipyard and Intermediate Maintenance Facility (PSNS&IMF):
 - September 14, 2014 through September 17, 2014 (broken sanitary sewer pipe under Pier 4 connecting to Lift Station 6),
 - June 3, 2015 (improper connection of sanitary sewer system at Building 457 to stormwater sewer dating back to 2011),²
 - February 11, 2018 through February 12, 2018 (improperly opened valve at Dry Dock 6 impacting Sinclair Inlet and Dyes Inlet),
 - July 30, 2018 to August 13, 2018 (sanitary sewer line clog and cross connection to stormwater line at NBK Bremerton Pier Delta affecting Sinclair Inlet and Port Washington Narrows),
 - August 22, 2018 to September 5, 2018 (broken sanitary sewer line to stormwater system at Dry Dock 4 impacting Sinclair Inlet),
 - January 14, 2019 (malfunctioning pressure relief valve at NBK-Bremerton Pier 6 impacting Sinclair Inlet),
 - January 24, 2019 to January 31, 2019 (malfunctioning grinder pump station back flowed to storm drain affecting Sinclair Inlet), and
 - March 2, 2019 to March 3, 2019 (damaged pressure sensor resulted in sewage collecting and pumping into Sinclair Inlet at Dry Dock 6).
- All records from June 10, 2014, to present related in whole or in part to fecal coliform monitoring, sampling, tracking, analysis, or reporting in waters, including but not

² The request includes, but is not limited to, all documents related to citizen complaint document 00439204062015R10.

limited to Sinclair Inlet, Dyes Inlet, Liberty Bay, Keyport Lagoon, Port Washington Narrows, NeSiKa Bay, and Port Orchard Passage, adjacent to the following navy installations:

- Naval Base Kitsap-Keyport
 - Naval Base Kitsap-Jackson Park Naval Housing
 - Naval Base Kitsap-Bremerton / Puget Sound Naval Shipyard and Intermediate Maintenance Facility (PSNS&IMF)
- All Illicit Discharge, Detection, and Elimination (IDDE) Plan(s) for:
 - Naval Base Kitsap-Keyport
 - Naval Base Kitsap-Jackson Park Naval Housing
 - Naval Base Kitsap-Bremerton / Puget Sound Naval Shipyard and Intermediate Maintenance Facility (PSNS&IMF)

Please provide all documents created not only up to the date of this request, but also up to the date that the documents are provided.

We request that these materials be supplied in searchable electronic form and formatted for a commercially-available software program, to the extent that it is reasonably possible to produce the information in that form or format. Please send the records on a USB or CD/DVD to the following address: Jane Steadman, Kanji & Katzen, P.L.L.C, 401 2nd Ave. S., Suite 700, Seattle, WA 98104. Alternatively, if EPA prefers to send files over a file-sharing website, please contact me at jsteadman@kanjikatzen.com to provide the information necessary to access the documents.

If you determine that portions of any records covered by this request are exempt from disclosure, please redact the exempt portions while leaving intact and providing all nonexempt portions of the record. For any records withheld in their entirety, please provide an index with descriptions of each record withheld with sufficient information for the Suquamish Tribe to make an informed decision as to its appeal rights as to each document. For any records that are partially redacted, please preserve enough information in the document sufficient for the Tribe to make an informed decision as to its appeal rights as to each redaction. For all records withheld or redacted, please provide a particularized description of the legal basis for withholding or redacting those documents. *See Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973).

The Suquamish Tribe requests a fee waiver for this request, which is made for a non-commercial purpose.³ The “disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 40

³ The Suquamish Tribe has no commercial interest that would be furthered by the requested records. The Tribe is a sovereign nation requesting this information on behalf of its members and the public, and does not seek this information for a use or purpose that furthers its commercial or financial interests.

C.F.R. § 2.107(l)(1); 5 U.S.C. § 552(a)(4)(A)(iii). EPA’s regulations at 40 C.F.R. § 2.107(l)(2) set forth four factors FOIA officers should consider in determining whether to grant a fee waiver for documents contributing to the public understanding of government operations or activities. The Suquamish Tribe satisfies all four factors.

Regarding Factor 1, the records covered pursuant to this agreement concern the “operations or activities” of the Navy, a department of the Federal government. 40 C.F.R. § 2.107(l)(2)(i). This request seeks information regarding the Navy’s discharge of wastewater, including untreated sewage, from the facilities listed above and the environmental impact of these Federal government activities. Regarding Factors 2 and 4, *id.* § 2.107(l)(2)(ii), (iv), the disclosure is of informative value and is likely to contribute significantly to increased public understanding of the Navy’s operations or activities. To the best of the Tribe’s knowledge, none of the records requested are accessible in the public domain. The requested records will likely provide insight into the extent of sewage discharges, the impact of those discharges on the environment (including water quality), the sanitary sewer system at these facilities, and steps taken to address untreated sewage discharges at these facilities. Regarding Factor 3, *id.* § 2.107(l)(2)(iii), the requested documents are likely to contribute to the public understanding of a reasonably broad audience of persons interested in the subject matter. The Tribe has extensive expertise in the subject area, and its staff has many years of experience directly related to environmental regulation in Puget Sound and efforts to improve water quality. The Tribe consistently obtains information about the Navy’s projects in and around the Puget Sound and other water bodies, and consistently uses its capacities to analyze and share the information in an easily understandable format for its members and the public.⁴ It is very likely that a reasonably broad audience will be interested in the Navy’s wastewater discharge processes associated with Naval Base Kitsap-Bremerton/Puget Sound Naval Shipyard, Naval Base Kitsap-Jackson Park Housing, and Naval Base Keyport because the public wants to know whether the waters where they live, recreate, and fish are clean, what contributes to water quality impairment, and whether Federal agencies have complied with federal environmental and procedural laws and regulations. The request for records is narrowly tailored, targeting specific, identified records related to the Federal operations and activities described.

FOIA is to be liberally construed in favor of those requesting fee waivers, and the Suquamish Tribe fully expects such a waiver will be granted. *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C.C. 2003) (indicating FOIA should be “liberally construed in favor of waivers for noncommercial requesters” (internal quotations and citations omitted)); *Inst. for Wildlife Prot. v. United States Fish & Wildlife Serv.*, 290 F. Supp. 2d 1226, 1232 (D. Or. 2003) (requiring “*minimal showing* of their legitimate intention to use the requested information in a way that contributes to public understanding of the operations of government agencies” in order to obtain a fee waiver (emphasis added)). However, should a fee waiver not be granted and

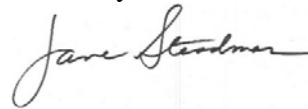
⁴ For example, please visit: <https://www.king5.com/video/news/local/tribe-blames-navy-for-water-pollution/281-587b8445-ea37-4055-adeb-b7e6c914bd17> (Mar. 28, 2019); <https://www.king5.com/article/tech/science/environment/suquamish-tribe-to-sue-navy-over-alleged-raw-sewage-spills/281-465ddfce-b286-4909-b3ce-20f93672c89f> (June 11, 2019); <https://www.kitsapsun.com/story/news/2019/06/11/suquamish-tribe-threatens-sue-navy-over-sewage-spills/1426310001/> (June 11, 2019).

should you estimate that the fees will exceed \$500, please contact me at the number listed above (Seattle office) prior to incurring those fees.

As you are aware, FOIA requires you to respond with a determination within 20 working days from receipt of this request, 5 U.S.C. § 552(a)(6)(A)(i), and we look forward to your response within this time period and the prompt release of documents thereafter, *id.* § 552(a)(3)(A), (a)(6)(C)(i).⁵

If you have any questions, need clarification, or would like to discuss prioritization of information that can be mutually agreed upon, please feel free to contact me. Thank you very much for your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Jane Steadman".

Jane Steadman
Kanji & Katzen, P.L.L.C.

Counsel for Suquamish Tribe

⁵ See *Citizens for Responsibility & Ethics in Wash. v. FEC*, 711 F.3d 180, 188 (D.C. Cir. 2013) (Kavanaugh, J.) (concluding a “determination” is “more than just an initial statement that the agency will generally comply with a FOIA request and will produce non-exempt documents and claim exemptions in the future. Rather, in order to make a “determination” . . . , the agency must at least: (i) gather and review the documents; (ii) determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the “determination” is adverse); *id.* at 188 (explaining the promptness requirement means an agency must typically produce responsive documents “within days or a few weeks of a ‘determination,’ not months or years”).